

## **REMARKS**

### **I. Status of the Claims**

Claims 1-4, 6-12 and 14-21 stand rejected.

Claims 5 and 13 stand objected.

Claim 13 has been cancelled.

Claim 22 has been added.

Claims 1, 12, 17 and 21 have been amended. No new matter has been added.

Claims 1-12 and 14-22 are pending.

### **II. Acknowledgement of Allowable Subject Matter**

The Applicants would like to thank the Examiner for the indication of allowable subject matter in claims 5 and 13. Claim 1 has been amended to incorporate the elements of claim 13.

### **III. Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claim 8 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner contends that the claim language is confusing because claim 1, from which claim 8 depends, states that the temperature sensor is a part of the first member while claim 8 states that the temperature sensor is remote from the first and second members. Applicants respectfully traverse the Examiner's rejection and request reconsideration.

Applicants submit that claim 8 does not require that the temperature sensor be remote from the first and second members. Rather, claim 8 clearly states that the "temperature sensing circuitry is remote" from the housing. This is an appropriate claim limitation since a sensor can be situated on the housing of a thermometer while having temperature sensing circuitry located remote therefrom. Accordingly, applicants request that this rejection be withdrawn.

**IV. Rejections Under 35 U.S.C. § 103(a)**

Claims 1-4, 9-11 and 14-15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Design 310,037 to Aoki ("Aoki"). According to the Examiner, Aoki discloses a thermometer comprising a first disk-shaped member having upper and lower portions A and B and a circumferential edge C, a second disk-shaped member having top and bottom sides D and E and a circumferential edge F. Additionally, the Examiner states that the Aoki thermometer includes a temperature display. The Examiner then concludes that the temperature display implies the existence of a temperature sensor and temperature sensing circuitry.

Applicants have amended claim 1 to incorporate the allowable subject matter of claim 13. Aoki does not teach or suggest all the elements of newly amended claim 1.

Since claims 2-4, 9-11 and 14-15 depend either directly or indirectly from claim 1, these claims are allowable for at least the same reasons as mentioned with respect to claim 1 above. Applicants respectfully request that the rejection of these claims be withdrawn.

Claim 12 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Aoki in view of JP 61270631 to Hosaka ("Hosaka").

Applicants respectfully submit that claim 12 depends from claim 1 and claim 1 has been amended to incorporate the allowable subject matter of claim 13. Neither Aoki nor Hosaka, alone or in combination, teach or suggest all the elements of newly amended claim 1. Applicants respectfully request that the rejection be withdrawn.

Claims 1-4, 6 and 9-11 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Design 356,965 to Chang et al. ("Chang"). According to the Examiner, Chang discloses all the features of the claimed invention.

Applicants respectfully submit that claim 1 has been amended to incorporate the allowable subject matter of claim 13. Chang does not teach or suggest all the elements of newly amended claim 1.

Since claims 2-4, 6 and 9-11 depend either directly or indirectly from claim 1, these claims are allowable for at least the same reasons as mentioned with respect to claim 1 above. Applicants respectfully request that the rejection of these claims be withdrawn.

Claim 16 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Aoki in view of U.S. Patent No. 6,637,935 to Chen ("Chen '935").

Applicants respectfully submit that claim 16 depends from claim 1 and claim 1 has been amended to incorporate the allowable subject matter of claim 13. Neither Aoki nor Chen '935, alone or in combination, teach or suggest all the elements of newly amended claim 1. Applicants respectfully request that the rejection be withdrawn.

Claims 17-21 have been rejected under rejected under 35 U.S.C. § 103(a) as being unpatentable over Hosaka.

Claim 17 has been amended to more particularly claim that the first member is "shaped to be disposed in the axillary region." Hosaka clearly discloses a thermometer having a curvable probe to allow the thermometer to be more easily placed and held in the patient's mouth and underneath the tongue (see Figure 3 of Hosaka). Thus, Hosaka does not disclose an auxiliary thermometer.

Applicants respectfully submit that claims 18-20 depend from claim 17 and are allowable for at least the same reasons detailed above.

Applicants respectfully request that the rejection of these claims be withdrawn.

Regarding claim 21, Applicants have amended the claim to more particularly recite that the thermometer is a "single disk-shaped member" with a temperature sensor positionable thereon. This is not taught or suggested by Hosaka. Instead, Hosaka discloses a temperature sensor situated on a distal end of an arm that is connected to a disk-shaped member. Additionally, claim 21 has been amended to more particularly claim that the single disk-shaped member is "shaped to be disposed in the axillary region." Hosaka clearly discloses a thermometer having a curvable probe to allow the thermometer to be more easily placed and held in the patient's mouth and underneath the tongue (see Figure 3 of Hosaka).

Applicants submit that claim 21, as amended, is allowable.

Claims 6-7 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Aoki in view of Hosaka.

Since claims 6-7 depend either directly or indirectly from claim 1, these claims are allowable for at least the same reasons as mentioned with respect to claim 1 above. Applicants respectfully request that the rejection of these claims be withdrawn

Claims 1 and 3 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Design 423,956 to Chen ("Chen '956").

Applicants respectfully submit that claim 1 has been amended to incorporate the allowable subject matter of claim 13. Chen '956 does not teach or suggest all the elements of newly amended

claim 1. Additionally, Chen '956 does not disclose a first disk-shaped member having a temperature sensor along its circumferential edge and connected to a second disk-shaped member. Rather, Chen '956 discloses a sensor distally disposed to the display housing. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claim 2 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen '956 in view of Hosaka.

Since claim 2 depends directly from claim 1, this claim is allowable for at least the same reasons as mentioned with respect to claim 1 above. Additionally, Hosaka does not disclose an arcuate-shaped sensor. Instead, Hosaka merely discloses a probe that can be curved to take on an arcuate shape. The sensor cannot be altered and is not arcuate-shaped in its original form. Applicants respectfully request that the rejection be withdrawn

**Conclusion**

In view of the above amendments and remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining, which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

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